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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,932	12/04/2003	Danny D. Baumgardner		5372

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THE INVENTORS NETWORK, INC.
332 ACADEMY STREET
CARNEGIE, PA 15106

EXAMINER

WOOD, KIMBERLY T

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,932

Applicant(s)

BAUMGARDNER, DANNY D.

Examiner

Kimberly T. Wood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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This is an office action for serial number 10/726,932, entitled Portable Wrist Rest System.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9 and 10 are rejected, as best understood, under 35 U.S.C. 103(a) as being unpatentable over Ashline 5,925,007 in view of McInnerny 2,763,264 in further Cherubini et al.

(Cherubini) 6,017,006. Ashline discloses a first support member (12), a second support member being a pad (38) superposed on the first support member with each member being rectangular shaped, a flexible wrist strap (44) inserted between the first and second support members (see figure 5, where strap is received in 40 between first 12 and second 38 support members). Ashline discloses all of the limitations of the claimed invention except for the height, length, width of the rest system. It would have been an obvious matter of design choice to have made the width

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of 1 ½ inches , the length of 3 inches, and the height of ½ inches, since such a modification would have involved a mere change in the shape or size of a component and within column 5, lines 4 Ashline provides support, motivation, or the suggestion to modify his device by varying the height, length, and shape of the device for particular uses or classes of users as long as the device keeps "the elbow, wrist and hand at the same neutral level to prevent misalignment of the elbow, wrist and hand during operation of a keyboard or mouse. A change in shape is generally recognized as being within the level of ordinary skill in the art since the Ashline reference provides a system that is for where in the hand and wrist are in alignment when engaged in repetitive and continual activity when using a computer mouse. Ashline discloses all of the limitations of the claimed invention except for the covering. McInnery discloses a first support member (1)), a second support member (2), and a pliable covering (3) having slots for the straps (16). It would have been obvious to one having ordinary skill in the art to have modified Ashline to have included the cover over the first and second support member as taught by McInnery for the purpose protecting the system from wear, providing a outer surface which can be readily cleaned, and adding additional cushioning. Ashline in view of McInnery discloses all of the limitations of

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the claimed invention except for the covering having a color and the support members being rubber foam or foam. Cherubini discloses a wrist rest comprising a first support member of rectangular dense foam rubber block (30, see column 5, lines 2ff) and a second support member being rectangular having a soft foam block (31) and a cover (32) being of pliable material (column 3, lines 50ff) having a color, since cloth or fabrics such as knit polyester or Lycra as disclosed by Cherubini in column 3, lines 56ff is well known to have color. It would have been obvious to one having ordinary skill in the art to have modified Ashline in view of McInnery to have made the cover of a material having a color as taught by Cherubini for the aesthetic purposes as well as for the purpose of providing a more comfortable material than plastic therefore adding cushioning and to allow the cover to conform to the anatomical details of the wrist. It would have been obvious to one having ordinary skill in the art to have modified Ashline in view of McInnery to have the first and second member being of dense foam rubber and soft foam as taught by Cherubini for the purpose of providing a padding that is comfortable to the user therefore preventing injury, stress, or strain since it is well known that pads are made of foam.

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Response to Arguments

Applicant's arguments filed January 28, 2005 have been fully considered but they are not persuasive.

Applicant's arguments with respect to some claims have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is within the knowledge of one skilled in the art to have provided a cover as taught by

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McInnerness to the carpal cuff as taught by Ashline for hygiene and aesthetics as being reasonably pertinent to the particular problem with which the applicant was concerned. Thomsen 5,335,888 clearly teaches that it is conventional and well known in the art to provide a cover to a wrist rest for the purpose of cleaning or replacement when damaged. McInnerney provides the motivation, suggestion or teaching to combine the covering having slots for the strap of Ashline to prevent the device from becoming dirty and preventing damage as well as providing the cover to be removed to be cleaned and for aesthetic purposes (page 1, column 2, lines 70ff).

In response to applicant's argument that McInnerness teaches a device to immobilize and restrain a patients' arm or leg is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, McInnerness addressed the applicant's particular problem of providing a cover for hygiene concerns and aesthetics. McInnerness is being combined for this particular problem and such a combination with Ashline will not result in

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rendering the device inoperable since the cover can be placed over the first and second members only and not the spreader plates (14, 15) or bearing surfaces (56) therefore allowing the wrist rest of Ashline to be movable.

In response to the applicant's arguments that rejection regarding the specific dimensions of the applicant's device are critical and therefore the obvious rejection is improper this argument is herein traversed. Ashline provides support, motivation, or the suggestion to modify his device by varying the height (which would include the distance that the wrist must be elevated above the work surface), length, and shape of the device for particular users or classes of users without departing from the scope of the claims as long as the device keeps "the elbow, wrist and hand at the same neutral level to prevent misalignment of the elbow, wrist and hand during operation of a keyboard or mouse" (see column 5, lines 4ff and column 4, lines 53ff). A change in shape is generally recognized as being within the level of ordinary skill in the art since the Ashline reference provides a system that is for keeping the hand, forearm, wrist, and elbow and wrist in proper alignment when engaged in repetitive and continual activity when using a computer mouse.

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In response to applicant's argument that Ashline cuff is directed more to supporting and stiffening the forearm than properly supporting the wrist the appropriate distance above the work surface, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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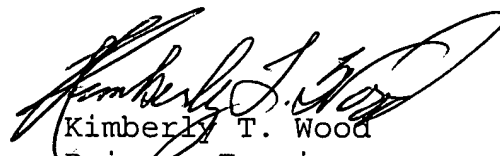
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly T. Wood whose telephone number is 571-272-6826. The examiner can normally be reached on Monday-Thursday 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Kimberly T. Wood
Primary Examiner
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December 6, 2006